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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

STATE OF OKLAHOMA, et al.,
Plaintiff,

vs.

CASE NO. 05-CV-00329-GKF SAJ

TYSON FOODS, INC., et al.,
Defendants.

DEPOSITION OF SHANON PHILLIPS
TAKEN ON BEHALF OF THE DEFENDANTS
ON APRIL 15, 2009, BEGINNING AT 9:00 A.M.
IN OKLAHOMA CITY, OKLAHOMA

APPEARANCES:

On behalf of the PLAINTIFF:
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Mr. Dan Lennington
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On behalf of the DEFENDANT-CARGILL, INC. AND CARGILL
TURKEY PRODUCTION:

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Also Present: Ms. Janet Stewart

Mr. Jim Leach

REPORTED BY: Laura L. Robertson, CSR, RPR

Exhibit 23

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1 Q. Were there several spreadsheets that were
2 created throughout your work on trying to come up with
3 this list of response costs?

4 A. There was one spreadsheet that was created
5 and refined, to my knowledge.

6 Q. Exhibit 2 are the documents that the state
7 produced to the defendants in this case. They are
8 Bates marked OCCRESP costs, 0001 through 00257. And
9 we are going to mark all of these collectively as
10 Exhibit No. 2.

11 If you would take a look at the Bates marked
12 documents 1 and 2. Is this the spreadsheet that you
13 referred to?

14 (Defendant's Exhibit 2 marked for
15 identification)

16 A. Yes.

17 Q. Also, is 3 -- are documents 3 and 4 the same
18 thing?

19 A. Yes.

20 Q. Okay. Let's go back to the persons who
21 assisted in the preparation of this list. You
22 mentioned Dan Butler. Please give us his title and
23 his involvement in this work?

24 A. Dan Butler is the former director of the
25 Water Quality Division of the Conservation Commission.

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1 A. The only other thing that I brought with me
2 today were the first couple of pages of many of these
3 work plans that are listed here, so that I could
4 accurately account for the objectives of those
5 projects.

6 Q. Referring back to page 5, I see the
7 handwriting that has the number \$237,500. What does
8 that number refer to?

9 A. That is the state match that is required for
10 us to receive \$356,250 of federal money.

11 Q. And how was that number determined?

12 A. That number is -- these projects require
13 60/40 match, and so the 237,500 is the 40 percent
14 match.

15 Q. I understand that these programs require a
16 minimum of a 40 percent match. In all cases on the
17 319 H grants, did the Oklahoma Conservation Commission
18 match just 40 percent?

19 A. Many times we overmatch our projects, and so
20 there are, most of our later grants are overmatched.

21 Q. I see back on page number 1, it says, "Match
22 not documented." What does that mean?

23 A. Match not documented means that we don't
24 have specific documentation on exactly where that
25 match came from. We do know that that match was

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1 A. It primarily focused on flow data, but I
2 believe that there were also collections of water
3 chemistry and parameters such as nutrients, turbidity,
4 dissolved oxygen, et cetera.

5 Q. Let's go onto the next line item, which is
6 1991, 319 H Illinois River Basin Treatment
7 Prioritization.

8 A. Thanks.

9 Q. Does document Bates stamped number 6 refer
10 to this line item?

11 A. Yes.

12 Q. And what are the amounts of -- what is the
13 amount of state funds that you determined were
14 incurred on this project?

15 A. \$87,186.67.

16 Q. How did you determine that amount?

17 A. That's based on the state match that would
18 be necessary to pull those federal dollars and to
19 complete the tasks laid out in the work plan.

20 Q. So again, this match is not documented?

21 A. Yes.

22 Q. So this is another situation where you
23 assumed that it was a 40 percent match?

24 A. Yes.

25 Q. And this is also another situation where you

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1 had urbanized areas, but it did focus on what were
2 believed to be the most significant sources of
3 non-point pollution in the watershed.

4 Q. Was the SWAT model used for this work?

5 A. No, this is before the SWAT model was
6 developed.

7 Q. Oh, what was the time period for the work on
8 this project?

9 A. 1991, perhaps -- I'm trying to remember, to
10 approximately 1995, 1996.

11 Q. All right. Let's keep moving. Now we are
12 looking at the next line, which is FFY 1992 104(b)(3)
13 and there are three lines there. Does Bates stamp
14 document number 7 refer to those three lines?

15 A. Yes.

16 Q. And give me a description of what these
17 programs are.

18 A. These are three tasks that were completed
19 under 1992 104(b)(3) project that focused in the
20 Illinois River Watershed, and they involved the staff
21 support for our education, monitoring and
22 implementation activities that we were doing in the
23 watershed.

24 There was -- task 37 worked with the Scenic
25 Rivers Commission to develop some programs that

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1 Q. Okay.

2 MR. LENNINGTON: Did you say Illinois Jones,
3 I am sorry?

4 THE WITNESS: Illinois Jones. I can show
5 you pictures of Illinois Jones if you come over to our
6 --

7 (Discussion held off the record)

8 Q. (BY MS. HILL) Let's go on to the next line
9 item, which is FFY 1992 319 H, task number 38.

10 A. Yes.

11 Q. Does Bates stamp document number 8 relate to
12 this line item?

13 A. Yes.

14 Q. What is the amount of funds expended for
15 this project?

16 A. \$166,666.67.

17 Q. And again, this is another example of a
18 match that is not documented?

19 A. Yes.

20 Q. And so this is a situation where you cannot
21 determine the sources of the funds that went into this
22 \$166,666.67?

23 A. We don't have documentation to show what
24 those sources are.

25 Q. And give me a general description of what

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1 task number 38 is then.

2 A. This is -- this paid for pre-implementation
3 monitoring associated with our Peacheater
4 implementation project. This is the monitoring that
5 was used to establish relationship between Peacheater
6 and Tyner Creek, that we could then evaluate post
7 implementation, to see whether or not our programs had
8 an impact in the watershed.

9 Q. Let's keep going. Let's go on to FFY 1996
10 319 H. This is task number 82. Does Bates stamp
11 document number 9 relate to the state's funds that you
12 estimate were expended on this project?

13 A. Yes.

14 Q. And how is it that you determined the amount
15 of state funds expended on this project?

16 A. In our contract with, this was a project
17 where we worked with Oklahoma State University. In
18 our contract we required them to provide 40 percent of
19 the funds for that contract, and to document where
20 those funds came from.

21 And so they provided us with records of
22 their salaries and indirect costs associated with that
23 program.

24 Q. Were these funds that were expended by OSU
25 then?

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1 A. Yes.

2 Q. Actually, this task 85?

3 A. 85, I'm sorry.

4 Q. I'm sorry as well. And what is the amount
5 of money that you determined were state funds expended
6 on this project?

7 A. \$41,549.79.

8 Q. What do those funds represent?

9 A. This is the costs that landowners
10 contributed to the installation of best management
11 practices in the Peacheater Creek Watershed.

12 Q. Did Oklahoma Conservation Commission
13 reimburse these landowners listed on pages 10 and 11
14 for these costs?

15 A. We reimbursed them for a portion of the
16 costs that were necessary to install these practices,
17 and they contributed the remainder.

18 Q. So is the \$41,549.77 the amount that the
19 landowner contributed?

20 A. Yes.

21 Q. Somewhere on this chart of pages 1 and 2 are
22 you claiming the amounts that Oklahoma Conservation
23 Commission expended?

24 A. We are claiming the amounts that the -- the
25 other amounts expended under the payment amount

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1 Q. So in coming up with the amount of funds to
2 put on your chart at Bates stamp 1 and 2, you did not
3 go through and mark out any of these line items that
4 were already on document 10 and 11; is that correct?

5 A. That's correct.

6 Q. Okay. And again, this appears to be a
7 program that relates to multiple types of non-point
8 pollution?

9 A. That's true.

10 Q. For example, Barney Nubbey, there is a line
11 item, "Dairy lagoon clean out and liner," and funds he
12 expended for that dairy lagoon clean out and liner are
13 included on this list?

14 A. Yes.

15 Q. And those funds are included in the \$41,000
16 approximately on page 1?

17 A. Yes.

18 Q. All right. Do you want to keep going or do
19 you want to take a short break?

20 A. I'm fine.

21 MR. LENNINGTON: If you're fine, then we
22 keep going.

23 Q. (BY MS. HILL) All right. Let's go on to --
24 FFY 1997 319 H, task number 89. It looks like Bates
25 stamp documents 12 and 13 relate to task number 89; is

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1 that correct?

2 A. Yes.

3 Q. And what are the state funds that you
4 determined were spent on task number 89?

5 A. \$30,121.73.

6 Q. And how is it that you determined that
7 amount?

8 A. That was determined based on information
9 provided to us by the Oklahoma Scenic Rivers
10 Commission on the state dollars that they contributed
11 to completion of the project.

12 Q. These funds go to purchase Porta-Potties,
13 for instance?

14 A. And trash bags and signage.

15 Q. Was there any water quality monitoring done
16 in association with task number 89?

17 A. No, there was no water quality monitoring
18 associated -- directly associated with this project.

19 Q. Any other evaluation study or assessment of
20 water quality in the Illinois River Watershed that was
21 done in association with task number 89?

22 A. There would have been education programs
23 that went along with this task that reported on
24 overall evaluation of water quality assessment, but
25 the actual assessment was not done under 89.

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1 A. I don't believe that they are referred to on
2 pages 12 and 13. I think those are referred to in the
3 work plans for those projects. So one of the things
4 to consider, and we were very careful to only -- where
5 we are able to document our match, there would have
6 been a considerable amount of match that was not
7 documentable, but the Scenic Rivers Commission doesn't
8 necessarily keep time sheets that enable them to
9 differentiate the amount of time that they spent on
10 each of the different efforts.

11 And so we don't have documentation of the
12 amount of time that they spent on their education
13 programs. We have -- they were able to provide us
14 with sufficient match by showing how much money they
15 contributed to maintaining their trash bags and
16 Porta-Potties.

17 Q. To be clear then, you are not making a claim
18 for any other costs that may have been incurred by the
19 conservation districts or the Oklahoma Scenic Rivers
20 Commission, other than what is listed here on page 1,
21 as well as 12 and 13?

22 A. No, we are not.

23 Q. Let's go on to FFY 1997 319 H, task number
24 99. I believe the page is Bates stamped 14 and 15
25 relate to task number 99; is that correct?

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1 A. That's correct.

2 Q. All right. And what are the amount of the
3 state funds that you're claiming are -- were expended
4 on task number 99?

5 A. \$15,242.23.

6 Q. And how is it that you determined that
7 amount?

8 A. That's based on 40 percent of the federal
9 dollars that were needed to implement the program.

10 Q. And on this line it says match not
11 documented, but it also says sufficient overmatch.
12 What does sufficient overmatch refer to in relation to
13 project task number 99?

14 A. That means that we matched the total 319
15 grant for EPA, and documented that match, but not
16 specifically that we matched each individual task in
17 that overall grant.

18 And the way that we would have matched that
19 overall project or that overall grant would have
20 included match from our locally led cost-share
21 program, where we implement best management practices
22 through our conservation districts.

23 As an example, in 1997 and 1998, the Adair
24 County Conservation District implemented \$15,000 worth
25 of locally led cost-share best management practices in

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1 the Illinois River Watershed. Cherokee and Delaware
2 Counties also received implemented \$15,000 worth of
3 practices in that -- in their counties during that
4 time period, although I can't say specifically which
5 ones, at this time which ones of those were in the
6 Illinois River Watershed, but we could provide that
7 information to you.

8 Q. But the claim for the alleged response cost
9 in relation to task number 99 on page number 1 do not
10 include those locally cost-share projects from Adair,
11 Cherokee and other counties; is that correct?

12 A. That claim again amounts to that 15,242.
13 What I was trying to explain to you is how that money
14 is accounted for. So we didn't -- when we are
15 required to track this information for EPA, we have to
16 document the match.

17 We aren't required to break it down by
18 watersheds, and so that wasn't necessary for this
19 program. But I was trying to explain to you that we
20 can show that the state spent that money specifically
21 in the Illinois River Watershed during that time
22 period.

23 Q. And the state's claim here, though is
24 \$15,242.23 is not any additional monies that may have
25 been spent by the county conservation districts?

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1 Q. (BY MS. HILL) Back on the record after a
2 break, and looking at the next line item on page
3 number 1, which is FFY 1998 104(b)(3)W. Does document
4 number 16 relate to the amount entered on this line
5 item?

6 A. Yes.

7 Q. Okay. And what is the amount of funds that
8 you estimated the state expended for this project?

9 A. \$100.

10 Q. And how is it that you determined that
11 amount?

12 A. This is information provided to us by one of
13 the project people in -- let me clarify. This \$100 is
14 match that was part of this project specific to work
15 in the Illinois River Watershed. There was other
16 match part of this project that was not in the
17 Illinois River Watershed.

18 This is match that was charges from the
19 Kansas vo-tech school that were not charged to
20 teachers attending a wetlands education program in the
21 watershed. And these would have been teachers from
22 the Illinois River area schools who were being
23 educated on this WOW, or wonders of wetlands education
24 program to offer, it is a training program for
25 teachers that then they take those programs back and

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1 incorporate into their curriculum.

2 Q. All right. So this \$100 amount here refers
3 to one educational program for a group of teachers in
4 the Illinois River Watershed?

5 A. Yes.

6 Q. And give me a description of what WOW is?

7 A. It is a program that trains teachers about
8 wetland function, wetland uses, types of wetlands, how
9 wetlands are an integral part of the aquatic
10 ecosystem, and how they can teach their students to be
11 more appreciative and protective of wetlands.

12 Q. Does the WOW program address generally
13 multiple types of sources of non-point pollution to
14 wetlands?

15 A. Yes. But when, for instance, when
16 educating -- the program has components that allow it
17 to be tailored to individual areas. And so when
18 educating about wetlands in the Illinois River
19 Watershed, they would discuss about how those wetlands
20 could function to filter nutrients, sediment, bacteria
21 from, or whatever pollutant sources were most
22 important in that watershed.

23 Q. Did this particular WOW program for these
24 Illinois River Watershed teachers address multiple
25 pollutants?

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1 Q. And how is it that you determined the amount
2 of money the state expended on task number 556?

3 A. We had match documented that was contributed
4 to the implementation of the program in the amount of
5 \$14,196.34. That money was provided by the landowner,
6 and then a portion of that match was also state
7 personnel who worked on the program.

8 That's broken down on page 19.

9 Q. Okay. So pages 17 and 18 relate to the
10 \$13,925.52 on page 19 under the match?

11 A. Yes.

12 Q. And is there documentation for the
13 additional \$270.82 that is a part of this claim?

14 A. No. That figure is based on the -- these
15 are grants that require a 25 percent match of the
16 federal dollars, and this is administrative support
17 from our comptroller, our Mike Thralls, other Oklahoma
18 Conservation Commission staff that are paid for with
19 state dollars that worked towards this program, but we
20 don't have a specific breakdown of their hours
21 associated with the project.

22 Q. Can you determine then which hours were
23 spent in relation to a specific task on this project?

24 A. No, I don't think that we can. That would
25 be difficult, if not impossible.

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1 Q. And tell me again the percentage of match of
2 the state on this 104(b)(3) plan?

3 A. These wetlands projects are 75/25.

4 Q. The federal monies are 75.5?

5 A. Yes. 75 and required to be matched by 25
6 percent state monies.

7 Q. And wetlands projects are denoted by the W
8 after the 104(b)(3); is that correct?

9 A. Yes.

10 Q. So unlike the prior 104(b)(3) programs that
11 we discussed that were 95/5 match, the ones with the W
12 are all a 75/25 match?

13 A. Yes.

14 Q. And going back to pages 17 and 18, a
15 landowner paid these fees directly to River Manage
16 Engineering PLC; is that correct?

17 A. Yes.

18 Q. Who is that landowner?

19 A. I will have to get you the name. I do not
20 have that, I don't believe. Oh, Mark Hayes, that
21 would be the name.

22 Q. And was there any water quality monitoring
23 done in association with task number 556?

24 A. Yes.

25 Q. And where is that described?

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1 stay on State 210 Implementation Funds. And what is
2 the total amount that you determined were the state
3 funds that were expended in relation to this task?

4 A. The State Implementation Funds are \$333,533.

5 Q. And we are just talking about the line item
6 right now for the \$333,533?

7 A. Yes.

8 Q. And were federal funds included, Federal
9 Fund 400 Funds included in that amount?

10 A. No.

11 Q. Was this chart something that already
12 existed prior to preparing these documents for -- to
13 provide backup for this chart?

14 A. Yes.

15 Q. Walk me through an example here. Let's
16 start with the top participant Melanie Bailey on page
17 44. How is it that you determined that Melanie Bailey
18 was in the Illinois River Watershed?

19 A. When Melanie Bailey contacted our Cherokee
20 County Conservation District that she would like some
21 help addressing some problems on her site, our project
22 coordinator would have visited her farm, well,
23 actually, first of all they would have looked up her
24 farm on the county plat maps to assure themselves that
25 she was in the Illinois River Watershed. Then they

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1 180, perhaps. Yes.

2 A. Yes.

3 Q. And how is it that you determined that state
4 funds were used to pay this \$185,000?

5 A. Mr. Stamper received a grant from the
6 Oklahoma Center for the Advancement of Science and
7 Technology that was devoted towards this project. He
8 determined to -- or he used \$185,000 of that larger
9 grant, specifically for the tasks that were laid out
10 in this project.

11 Q. So this money came from the Oklahoma Center
12 for Advancement in Science and Technology?

13 A. Yes.

14 Q. Let's go on to the next line item, the last
15 one on page 1, which is FFY 2002 319 H. This
16 task 02-010, I believe pages 181 and 182 relate to
17 that task; is that correct?

18 A. Yes.

19 Q. And give me a description of that task
20 generally.

21 A. This task was to continue some of the
22 riparian area protection that we had done under task
23 113 and extend those out for a period of 30 years.

24 Q. And that 113 task was aimed at stream bank
25 stability; is that correct?

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1 A. No, this 113 task was aimed at addressing
2 animal waste issues in the Illinois River Watershed.

3 Q. Is that --

4 A. That's this 1999 319 number 113 we had all
5 of those lines.

6 Q. Okay, okay. And this is another situation
7 where you're unable to document the amount of state
8 funds that were matched?

9 A. The -- this is another situation where the
10 grant was matched and documented through programs such
11 as our locally led program, and then the landowners
12 also provided some match, but we don't have -- we
13 haven't produced documentation to show exactly where
14 that match -- what those sources of match were devoted
15 specifically to this project.

16 Q. So this sum of a little more than \$417,000
17 would include landowner contributions?

18 A. Yes.

19 Q. Let's go onto page number 2. Looking at
20 line item 2005 319 H, task 05-124. I believe the
21 documentation for this task is listed on page 183; is
22 that correct?

23 A. Yes.

24 Q. And as a matter of course on this project,
25 does the Oklahoma Conservation Commission separately

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1 track litter that is transferred from the Eucha
2 Spavinaw Watershed and the Illinois River Watershed?

3 A. Yes.

4 Q. And the sum of \$41,196.18, is that money
5 that was actually paid out to individuals to complete
6 the transfer of poultry litter?

7 A. Yes.

8 Q. Is there any district time included in that
9 sum, or district contribution?

10 A. There is no district contribution included
11 in that sum. That's state refunds again that was paid
12 to the landowner or paid to the conservation district
13 for their administration of the program.

14 Q. It looks like the backup for page 183 is
15 contained in pages 184 through 193, or no, I'm sorry.
16 196. Is that correct?

17 A. Yes.

18 Q. All right. Let's go on to the next line
19 item, which is 2005 319 H task number 05-132. This
20 says Stamper supplemental. Give me a description of
21 what this task was?

22 A. We did not complete all of the efforts
23 devoted to the Stamper Project under that previous
24 line item task, 02-004. So this is a continuation of
25 the effort to implement that project, and a summary of

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1 add up the extra 25 percent of those costs, that comes
2 to the 1539.66.

3 Q. And adding those two sums together, the
4 \$17,788.14 and the \$1,539.66, we get the total of
5 \$19,327.80 that's listed on page 2?

6 A. Yes.

7 Q. All right. Let's go to the next line item,
8 which is copiers?

9 A. Yes.

10 Q. And is that item also documented on page
11 251?

12 A. Yes.

13 Q. And what percentage was applied to the
14 copiers to break out the Illinois River Watershed from
15 Eucha Spavinaw Watershed funds?

16 A. 80 percent.

17 Q. Do you know how 80 percent was determined
18 for copier use?

19 A. I believe that it was based on the amount
20 of -- oh, it is summarized on page, on page 253, gives
21 a summary of how those expenses were, and percentages
22 were accounted for. So it took into account the
23 percentage of time we had conversations and make
24 copies for the Illinois River Watershed compared to
25 the Eucha Spavinaw Watershed.

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1 Q. (BY MS. HILL) Back to page 2?

2 A. Yes.

3 Q. On project 2007 319 H, the final column
4 there is a denotation of, "Will spend, \$377,000."
5 What are you referring to there?

6 A. We have allocated \$377,000 of states
7 general, or refunds that will be spent on the project.
8 And those practices are obligated. We have contracts
9 with landowners to install those practices, but they
10 haven't been installed to this point.

11 Q. Are those part of the claim for response
12 costs at this time --

13 A. No.

14 Q. -- for OCC?

15 Are you claiming any other costs that may be
16 incurred in the future?

17 A. Not at this time, no.

18 Q. We discussed persons who you met with in
19 preparing this list. Are there any other persons with
20 information who you consulted with or assisted you in
21 coming up with this list of the response costs that
22 allegedly were incurred by the Oklahoma Conservation
23 Commission? Earlier we listed Jim Leach, Dan Butler,
24 Cheryl Gibson, Steve Coffman.

25 A. Eldon Marklyn also tracks BMP implication

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1 Q. Okay.

2 MR. LENNINGTON: I think that's it. Thank
3 you.

4 REDIRECT EXAMINATION

5 BY MS. HILL:

6 Q. Is the Oklahoma Conservation Commission
7 making a claim for future response costs?

8 A. Not at this time. They are making a claim
9 for response costs shown on page 2, totaling
10 \$2,963,321.78.

11 Q. Does this \$2.9 million included the \$377,000
12 listed on page 2?

13 A. No. Well, I'm sorry, let me clarify that.
14 That 377,000 does include -- \$2,184 are included in
15 that 377,000. But they have already been spent. So
16 I'm sorry, that \$377,000 number should be \$374,826.

17 Q. Okay. Discovery ends tomorrow, and you are
18 designated to testify about agency response costs and
19 you have told me you're testifying here on behalf of
20 the Oklahoma Conservation Commission.

21 I need you to tell me if you intend to
22 testify about any other response costs that are not
23 listed here on pages 1 and 2?

24 A. No.

25 MS. HILL: I have no further questions then.